Indian Majority Act itself says that it will come into force only after three months after it was passed. A similar provision, I think, is necessary as is the usual practice. I only point out this difficulty in the present measure; and with this observation, I also support the principle of the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With reference to the observations of Mr. P. K. Narayana Pillai, I think that section 4 is clear on the point, *viz.*, that nothing done under this Regulation shall affect the capacity of any person who, before this Regulation comes into force, has attained majority under the law applicable to him. Such cases will not be covered by this Regulation. Anyhow, the point suggested by Mr. P. K. Narayana Pillai may be considered at a later stage.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I say that, because we have a similar provision in the Indian Majority Act.

The question that the Travancore Majority Bill be read in Council was put and carried.

The Secretary then read the title of the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to move that, this being a small measure, any amendment necessary might be made at the time the Bill is considered by this Council next time and that it be not referred to any Select Committee.

The motion was put and carried.

THE BANKERS' BOOKS EVIDENCE BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Bankers' Books Evidence Bill be read in Council.

MR. R. NILAKANDA PILLAI (*Ag. Financial Secretary to Government*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, the object of the Bill is to afford facilities for bankers having very heavy transactions. Under the Travancore law, if the evidence of entries in the books of a bank is required, such books have to be produced and the judiciary are authorised to ask the banker to produce his books. This leads to very many difficulties and it is not possible for the court to receive any secondary evidence, because secondary evidence can be accepted only under certain circumstances. For various other reasons, it is obligatory upon the bankers even to produce the orignal books under certain conditions when the litigants want them for purposes of evidence.

This difficulty has been brought to the notice of the Government by some banks and it is a real grievance no doubt. What the present Bill proposes to do is, in the case of banks and in the case of individual

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Mr. T. Lakshmana Pillai.]

or private firms notified by the Government, to enable such banks or firms to give attested or certified copies of the entries. But, of course, if it is impugned by either side and if the court thinks it necessary for the ends of justice to have the original books produced, then it may call for them. Ordinarily the book has to be produced now in court and left in the court itself. Very many persons do not like their books to be inspected by others and their being put to other unnecessary inconveniences also, because it interferes with their business.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I know how many registered companies there are in the State and how many of them are of more than ten years' standing?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): About 42. There are very many indigenous banks. In the case of individual or private firms, it is only if the Government are satisfied about them that the notification will be issued. After all, the bankers have *nalvazhi* books. In some other cases, very heavy books are to be placed in courts with the result that they are kept in the court for some time and then taken from the court, and they have to be brought again to the court if required. All this will put the bankers to considerable inconvenience.

PRESIDENT: Does it include *hundi* business also?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes, *hundi* banks may also be recognised by the Government.

In such cases, you can rely upon the copies of the entry; but if the court wants the original for any purpose it may call for it. I think it is absolutely necessary in the interests of banks to give such reasonable help to these bankers; otherwise, they will be put to considerable inconvenience and difficulties.

MR. M. R. MADHAVA VARIAR (*Chengannur* cum *Pattanamtitta*): What is the inconvenience?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): That is to say, the books have to be taken to the courts, and left there for some time.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I know whether it is not the practice for banks and witnesses to produce their account books, and whether, on production of a certified copy thereof, they are permitted to take back the account books at once?

PRESIDENT: Is it legal according to the Evidence Act?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It has to be produced there, and, if it is necessary, it has to be brought again. The fact is that, even though we produce it and leave a copy and then get it back, it means unnecessary delay and inconvenience.

MR. T. LAKSHMANA PILLAI (*Nominated*): Who is to certify to the eligibility of the bank to participate in the benefits of the Regulation?

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MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The Government.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): May I know how many representations have been made to Government and by whom?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In the first place, by the Imperial Bank of India.

MR. R. NILAKANDA PILLAI (*Ag. Financial Secretary to Government*): I second the motion.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Sir, I oppose the principle of the Bill. I do not think that there is any necessity or justification for the enactment of such a measure at present. So far as the Anchal and Post Office Savings Banks are concerned, their books can be treated as public documents and secondary evidence admitted. Those books apart, I can find no need for a measure of the kind now proposed. The learned mover of the Bill says that bankers feel considerable inconvenience and obstruction to business if the books are to be produced in court and detained there for any time. If such a ground is to weigh with us, we should, in fairness, extend the law to all sorts of account books. I fail to see why the books of a small banking company should have greater consideration at our hands than those of respectable firms doing other business. The law in some other countries no doubt permits secondary evidence being admitted in the case of bankers' books. But that is founded upon quite a different principle, *viz.*, that the public inconvenience caused by the removal of documents of that sort would justify the introduction of secondary evidence.

In Mortimer *vs.* M'callan, the leading English case on the subject Lord Abinger, C. B. states thus:—

"It has been established by a series of decisions, the first of them, I think, by Lord Mansfield, that the books of the Bank of England being of great concernment to the whole of the national creditors, the removal of them would be so inconvenient that copies of them might be received in evidence. It was founded upon the principle that the public inconvenience from the removal of documents of that sort would justify the introduction of secondary evidence. That principle has been adopted in a variety of cases and has never been questioned since. I know there have been attempts to apply it in cases where it was not applicable; the first was the case of Rex *vs.* Lord George Gordon (2 Doug 590), where copies of the journals of the House of Commons were offered to be given in evidence, and supported on the ground of the above decision by Lord Mansfield as to the books of the Bank of England; but they were rejected by him on the trial on the ground that no such inconvenience would attend the removal of the journals of the House of Commons, as any wishing to remove them could get the sanction of the Speaker to do so.....The next case that arose was with respect to the books of the Customs and Excise. It was formerly the practice to produce them, but after some consideration it was thought that the public inconvenience was so great, that it has become every day's practice in this and the other courts, to allow copies of those books to be received in evidence. That goes upon the general principle of not removing books of general concernment. Then, does not that principle apply in all such cases? The public inconvenience in this case is as great as in the case of any other books."

In the present state of the banking industry in this country, I cannot think that the production of bankers' books can in any way inconvenience the public. In any event there has not so far been any demand

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[Mr. S. Krishna Aiyar.]

from the public for a measure of the kind now before the House. According to the latest report of the Joint Stock Companies Registrar, there are only 39 companies in the State now doing banking business. Several of these are concerns very lately started and their soundness is questioned by the Registrar himself.

The Bill proposes, in course of time, to extend the provisions of this Regulation to the books of any partnership or individual carrying on banking business in this State. Under the circumstances, I am afraid, the Bill, if passed, would occasion hardship to the general public.

Even in England, it was only after a good deal of hesitation that a concession of the kind was extended to the banks generally. The Bank of England enjoyed the concession on the ground that their books were of great concernment to the national creditors. It is only in the year 1879 that the concession was extented to the other banks by the Bankers' Books Evidence Act (42 Vict. C. 11). That act also takes care to provide necessary safeguards against perpetration of any fraud. Sections 4 and 5 of that Act make actual proof that the book, at the time of the making of the entry, was made in the usual and ordinary course of business, that the book is in the custody or control of the bank and also that the copy has been examined with the original entry and is correct, a condition precedent to the admissibility of secondary evidence. The Bill before us provides for a mere certification to that effect. I do not think that any need for such a measure has arisen and I therefore oppose the Bill.

MR. S. KRISHNA AIYAR (*Mavelikara cum Kartigapalli*): Sir, I also beg to oppose the Bill. The law, as it stands at present, allows a banker or any other businessman to produce a copy prepared by himself and after the copy is compared by an officer of the court, he is allowed to take the book back. When, however, questions arise as to the genuineness of the transaction, the original books have to be kept in court and have to be very carefully scrutinised. So that, even if the present Bill be passed into law, if these books are necessary, they have to be kept in court and therefore the special measure of protection sought to be given cannot be enforced by law. Hence, I cannot find, in the first instance, any reason or justification for giving a privilege to a special class of people.

Secondly, how banks are in a better position than other business concerns also passes comprehension. There are a number of banks in this State and this Bill is proposed to be extended to these banks also. Some of them are flourishing, under high-sounding names like the Vembanad Bank, Kaitapuzha Bank, Patiramanal Bank, etc. There are a number of other business-concerns which are doing a much larger volume of business than any of the banks, probably excepting any branch of the Imperial Bank in Travancore. We shall take as illustration business-concerns like those of Messrs. Darragh, Smail & Co., Pierce Leslie & Co., or Harrisons and Crosfield. If banks do business in money and money

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alone, those other concerns do business not only in money but in commodities also. It cannot be said that these banks are in a better position or require more safeguards than other business concerns which also might find it extremely difficult or even more difficult to bring the books before the court or keep them there. My friend, Mr. Subba Aiyar, has not explained why banks should be treated on a better footing than other business concerns.

Then again, though the title deals with bankers' books and bankers' books only, we find in section 5 the following:—

"No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book, the contents of which can be proved under this Regulation or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause."

Now, who are the officers proposed to be exempted? Does it mean everybody from the *gollа* to the agent of the bank? Again, what are the special causes that would justify a court in departing from the general principle that is stated in this measure? Supposing for special causes the court passes an order, is it subject to appeal or revision? Supposing these banks have given copies and they are put in in evidence in a case when the matter is disputed, or even when it is not disputed, the transaction has to be independently proved. The copies will be evidence of only the existence of those entries in the bank's books. The transactions themselves have to be independently proved under the Evidence Act. So that, the officer will have to be summoned to swear to the transaction. The exemptions proposed in the bill are too wide.

When I saw the title of this measure, I thought that a corresponding liability or responsibility would be placed upon banks, whether private banks, individually owned banks, firms or companies. We have had plenty of instances lately when the public have deposited money in private banks and have lost considerably owing to voluntary or involuntary cases of collapse. Now, at the first blush, I thought the Government, or rather the mover, would introduce a rule to the effect that all private banks which take deposits from the general public would be bound to publish their balance sheets, lists of their holdings and lists of their deposits from time to time, if not monthly, at least quarterly. It is only when there are such safeguards that the public can be allowed to make deposits in these private concerns. In the absence, then, of any protection to the general public against these banks, we find a sort of privilege being sought to be conferred on them. It appears to me to be something like the Princes' Protection Bill, which neither princes nor publicists wanted.

Another objection is that, when applications are brought before the Government for the grant of privileges such as prescribed in the present Bill, the Government itself might feel very great difficulty. Here are moneyed interests coming and seeking valuable privileges from Government. Government agencies are human and they act upon the recommendations of subordinate officers. There may be rival banks in the same locality. It cannot be the policy of the Government to refuse

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[Mr. T. K. Velu Pillai.]

wholesale all applications or accept wholesale all applications. It is only when the Government discriminates between the interests of rival banks that the danger comes. The reputation of the Government is likely to be shattered when one bank is accorded the privileges and another refused. Thus, from the standpoint of the Government also, this measure appears to be more than delicate. The credit of a bank whose application is refused is ruined and its business follows its credit.

Coming to one or two other provisions, we find that this measure is proposed to be extended only to banks that keep a cash-book, a day-book or journal and a ledger. No indigenous bank in the State keeps a cash-book and a day-book separately. The *Nalvazhi* is all in all to them, so that, if it is sought to be accorded only to banks keeping cash-books, it may become unworkable so far as indigenous banks are concerned.

Then, we find we are launched into other difficulties. For example, in the matter of costs, the court has been given power to decree costs against one who is no party to the proceeding. How is the party to be represented? Has not the party, *i. e.*, the bank, a right to be heard? How is he to be heard? And supposing an order for costs is made against or in favour of the bank, has a right of appeal or a right of revision been given? Who is to apply as against the bank for costs? These are further matters which do not seem to have been considered. What we find is that this Bill is meant to give considerable privileges to moneyed interests. Privileges to one class mean an encroachment on the rights of other classes. This House should always stand against such a thing. On these grounds, I beg to oppose the measure.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): Sir, the mover knows that there is no law of evidence in Travancore, and very often we hear, the Honorable Judges of the High Court reminding us, when we argue points of law, that after all the Evidence Act is not law in Travancore. There are no doubt observations of eminent Judges where they make pointed reference to the provisions of the Indian Evidence Act. All the same, they sometimes say that the Evidence Act has not been formally recognised to be binding on them, meaning that it has not received the impress of the legislature. When there is no such general law covering the whole subject of evidence, I am surprised to find this lean skeleton of a legislative measure usurping the right to claim our attention.

The Bankers' Books Evidence Act seems to be an alliterative expression. But the pleasure of the alliteration is entirely removed and a volume of pain only remains when it is realised that the object of this measure is to benefit a small class of people who are already making large profits at the expense of the people who are obliged to borrow from them. I do not object to the bankers charging interest. Unless interest is paid, the banks are not going to lend out any money. The attempt seems to be to override the ordinary rules of law in favour of the

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banker, to exempt the officers of banks from appearing before courts of law. Sir, in certain legislative measures I have found royalty exempted from personal attendance in courts. To raise a banker to the eminence of royalty (*laughter*) so that he shall be above the necessity of appearing before a court of law, I submit is not a noble attempt. My friend knows that there have been so many banks which, after doing considerable business for a time, have collapsed, whether voluntarily or involuntarily I need not discuss. We have come across instances in which people come to Travancore, nobody knows from where, people armed with a few rings of imitation diamonds (*laughter*) and some silks, driving in a coach and pair for a month or two, and quietly receiving deposits from all; and in a few years, through reasons which are sometimes made public and sometimes absolutely forgotten, they go away, and no court of law, no peon or *amin* or police constable can track him anywhere in the world. Now, when the hard-earned money of the people of this country is being deposited with these banks, when the Government find that these have not been working properly, when the interests of the public have not been sufficiently safeguarded, I expect the Government will come forward and enact a measure which will prevent any fradulent action, any shifts and devices by bankers in order to defraud people of their rights and their money. If, Sir, along with this favoured child of the Bankers Books' Bill, my friend Mr. Subba Aiyar had also taken the trouble to have a general law regulating the conduct of banks, I should have welcomed it with certain reservations. I should have then been in a position to accept the principle of this Bill. But here is an attempt to heap rights, to heap favours, to heap privileges on people who are already in enjoyment of these while allowing power unfettered and leaving people in the lurch by permitting banks to go on as they like. But the Law Member says that he is prepared to lend his fact weight to the Bill. In spite of all the arguments he could marshal—I may say he can marshal them very efficiently—in support of his position that this new offspring of the Legislative Department should meet with a happy welcome from the members of this Council, I am sure, Sir, that my friends here will not be in a position to support the principle of this Bill. The Bill is conceived on wrong lines and it is a really dangerous and a purely mischievous measure so far as the people are concerned. I think that even the honesty of bankers will induce them to come forward and say that they are not prepared to accept this wrong principle at the expense of others. I oppose the principle of the Bill.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have also very great pleasure not to support but to oppose the principle of the Bill. The present measure is fashioned upon the British Indian Bankers' Evidence Act, Act XVIII of 1891, which itself is adopted from English Statutes 42 and 43 Victoria, Chapter 11. The necessity for an enactment of the description in England may be granted when we take into consideration the banking activity that exists in the United Kingdom. Coming to India, as it is a piece of evidence, it was only probable and proper that, to supplement the provisions of the Indian Evidence

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[Mr. P. K. Narayana Pillai.]

Act, a step like that measure was deemed necessary in British India also. But, in Travancore, when we have no substantive enactment relating to the law of evidence, to say that a particular region of evidence should be particularly legislated upon, seems to be not quite reasonable.

I would also beg to point out the nature of the banking concerns that we have got here. We have got the registered Joint Stock Companies carrying on banking business; we have got partnership concerns carrying on banking business; and there are also individuals carrying on the same business. All the three varieties are attempted to be protected by the measure now proposed by the learned mover of the Bill. And the protection that these people are going to have is by means of an executive order. The Government make exception in favour of such and such a bank which is carrying on banking business, when they are approached. Then they are protected to that extent and only certified copies of the mysterious account books that these people give would be available to the litigant public. Even after considerable trouble and difficulties when the original account books are produced in court it is an extremely uphill sort of work for the pleaders and litigants to find out and discover the nefarious methods adopted by the banking agents. When such is the case, the ring-fence of protection round this sort of usurious people is, as Mr. Velu Pillai puts it, a dangerous game of law-making. Suppose a department of Government is approached by a banker who has neither a *Nalvazhi* or journal to expose his cards and hand and he gets a further protection that his original books need not be produced in the court, then various miracles may be worked. Even as it exists, we have seen that, so far as Government are concerned, when sanctions for the institution of suits have been issued by the Government and subsequently litigation has been undertaken under cover of such sanction, it has been discovered that fraud was practised upon Government and that the Government would therefore willingly withdraw the sanction. Such are the instances which we occasionally see in courts of law. Under such circumstances, the Government may be approached by any banker with the result that his banking accounts may be conveniently secreted, and in place of that the so-called certified copies may be issued and the honest litigants may be pummelled in courts of law. That is one danger. Under the authority of the Government, it is possible for people to shut out evidence. That, I submit, is not a desirable state of affairs.

As far as I can see, only two attempts have been made by the learned mover of the Bill to depart from the British India Act. One is section 7, for which there is no corresponding section in the British Indian Act.

> Notwithstanding anything contained in this Regulation, the court may order the production of any banker's books when it thinks that an inspection or perusal thereof is necessary for the ends of justice.

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Now this one section is sufficient, even if the Bill proceeds upon a glorious principle, to circumvent all provisions contained in this Bill. For, at each turn, a litigant or an experienced pleader may convince the court that its production is necessary for promoting the ends of justice. So all the protection given in the other provisions of the Bill may be easily evaporated by section 7 of this Bill.

Then the only other change that has been adopted in this Bill is with respect to clause 8, sub-clause (3). It runs as follows:—

> Any order under this section awarding costs may be executed as if the order were a decree for money passed by itself.

That is a change, and the change, I am sorry to note, is not a happy one. For section 8 lays down the principle that a court can decree the cost and the order for the cost can be executed by the same court itself as passed the order.

A 'court' is defined thus:—

> The 'court' means the person or persons before whom a legal proceeding is held or taken.
>
> The term 'legal proceeding' means any proceeding or enquiry in which evidence is or may be given, and includes an arbitration.

So, a court, according to the definition contained in this measure, amounts to an arbitration court. The question arises therefore whether, under clause (3) of section 8, an arbitrator himself may be able to execute a decree passed by him for costs. It is impossible because an arbitrator has no power to execute any order that he may pass with respect to the cost to be awarded by one party to the other. Hence, in the British Indian enactment, in view of the extended application given to the expression 'court', the legislature provides that the courts in awarding costs must designate the civil court by which the decree as to costs has to be executed. That is an inevitable provision the meaning of which has not been taken into consideration by the mover of the Bill. He has simplified the thing to the considerable detriment of the other provisions of the enactment. The two changes that have been contemplated in the new measure are extremely unhappy and the principle underlying the whole Bill itself is unwelcome in the state of affairs as they exist at present. With these observations, I oppose the measure.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Sir, I rise to support the general principle of the Bill. Even after listening to Messrs. S. Krishna Aiyar, T. K. Velu Pillai and P. K. Narayana Pillai, I am not convinced that there are dangers lurking in the Bill and that the Council should not therefore agree to the motion just before the House. No doubt, it is on public grounds that bankers are now to be sought to be exempted from the liability of producing their books. In the first instance, it is in the public interests that litigants are allowed the privilege of having certified extracts from these books for substantiating their contention. What is the danger that is likely to result even to the public generally or to individual litigants by that privilege being allowed to certain statutory bodies ?

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[Mr. G. Parameswaran Pillai.]

My friends were growing warm and eloquent over certain recent financial failures of banking institutions. Financial failures of banking concerns are not peculiar to Travancore. We find them all the world over. Perhaps, as we are now entering largely into the region of the development of trade and industry, financial failures do come in very much more frequently than in earlier days when there was little scope for the development of the country itself.

I perfectly appreciate the plea put forward by some of my friends that the legislature ought to make provision against the fraudulent bankers who are easily misleading the credulous public and swindling all their money. Only, that has no logical relation to the motion before the House. Whether in the public interest or in the interests of these bankers—even if it is to be changed on that basis—a change is required in the method of proof, so that the bank might be allowed to continue its business without serious dislocation.

My friend Mr. Krishna Aiyar raised the question why that concession should be made in favour of bankers alone and not in favour of other trading concerns. I say that the very same reason which actuated the British legislature and the Indian legislature to enact a measure like the Bankers' Books Evidence Act, and the reasons which induced those legislatures must certainly apply to local conditions as well. It is in the interests of trade and industry that a certain amount of protection ough to be given to the bankers. It is on the existence of banks that trade and industry do continue to exist and develop. Probably, Sir, that was the reason which induced the British legislature and the Government of India legislature to enact a provision of that nature.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I ask how many banks existed in British India when a similar provision was enacted there?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): Well, the banks that existed then were the Presidency Banks, the National Bank, the Chartered Bank and other banks. These are some of the banks which come to my memory. I do not want my friends to understand me that, merely because an individual puts up a board "bank", he is doing banking business, and the Government should grant them any privilege. For instance, take the case of the National Bank, or the Imperial Bank, take the case of Co-operative Banks run in the State, take the proposed State-aided Bank, which we all want; with reference to these institutions, I am just submitting that, except when the positive interest of the administration of justice demands it, they should not be compelled to produce their books.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): May I ask Mr. Krishna Aiyangar whether he is aware that Co-operative Banks are ignored altogether in this Bill?

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): If it is ignored, it is a ground for suggesting its inclusion; it is not a ground for excluding other banks. I concede, Sir, that municipalities are given the privilege of giving certified copies.

PRESIDENT: I am not sure that Co-operative Banks are definitely excluded.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Only companies registered under the regulation. "Companies" have been defined.

PRESIDENT: That is a matter of detail.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I think it is quite desirable that Co-operative Banks and institutions like the Imperial Bank and the National Bank, on the existence of which the trade and development of the country do depend, should be given a facility for issuing certified copies under their seal and signature as primary evidence in the first instance to be produced in a court of law. But, as my friend Mr. Narayana Pillai pointed out, the privilege, the much-talked of privilege, that is now sought to be conferred on these favoured institutions could be easily proved to be an absolutely worthless crumb by some skilful lawyer or client saying: "I want the original books."

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Krishna Aiyangar if he is in favour of a law to regulate and control the working of banks.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I am; and my views I set forth in the first Co-operative Conference held at Alleppey. I said then, and do feel now, that, in the interests of the public, some sort of control ought to be exercised by the Government.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to know if he would wait till that question is also taken up.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): This has nothing to do with the much larger question of controlling the banking institutions in the State. It rests with the Government to say: "We give our concession to this particular bank". It rests with the Government to say: "We do not allow the concession to any private firm". So far as the Joint Stock Companies and Co-operative Banks are concerned, they have to render accounts to the Government and the Registrar of Joint Stock Companies and the Registrar of Co-operative Societies. They have to be inspected by a Chartered Accountant. What is the harm or difficulty in taking a certified copy of an extract from their books to be produced in the first instance? From the warmth with which the Bill was opposed by some of my friends, it looked as if serious interests here likely to be prejudiced by the Bill being allowed to be read in Council. No doubt, some difficulties were pointed out by Mr. Narayana Pillai. Well, all these must receive the detailed examination of the Select Committee. Municipalities are now given the

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statutory privilege of issuing certified copies of their books and the courts are required to accept them as primary evidence. I ask why we should not accept that principle.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I wish to know whether all these banks or registered companies are audited in the same manner as the municipalities.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): The law demands that they should be aduited by Chartered Accountants or accountants who have been certified by the Government of Travancore to be reliable to audit accounts.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is a Chartered Accountant necessary and deemed obligatory to examine the accounts of an individual?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I did not use the word "Chartered Accountant" in the technical and narrow sense in which it is understood. So far as the Imperial Bank is concerned, their accounts are audited by Chartered Accountants. So far as the municipalities are concerned, they are audited by the Audit Department. I take it that the Co-operative Banks are audited by some certified accountants or some officer of the Co-operative Department itself. But I submit that it is a difficulty which will crop up in every instance. The bankers' book is a much more important book than a book which merely shows copra purchases so much, coir purchases so much, copra shipped so much. A book of that nature of an ordinary business man is not quite so serious as the ledger of a banker which shows exactly the financial position of different individuals in the State. Apparently they meet the requirements with greater promptitude than ordinary businessmen. After all, Sir, if even their interests ought to be subordinated to the larger interests of the public, if as a matter of fact there are dangers lurking in the proposed legislation—to my mind it seems to be an innocent provision—I am certainly at one with my friends in thinking that it ought not to be extended to every institution merely because it goes under the name of a bank. I trust to the Government exercising sufficient watchfulness in examining the financial condition, the general reliability and the antecedents of a banking institution before it satisfies Government. After all, as my friend Mr. Narayana Pillai put it, the privilege has been rendered absolutely valueless by that provision which enables a judge to send for the books and keep them there not merely during the course of the trial, but the books are kept there until the appeal is disposed of by the appellate authority. That means for several years the books have to be kept there. After the end of the year, "മനോക്കിയിടത്തോളം കണ്ടുകിട്ടിയിട്ടില്ല", is the endorsement given to the banker. Such a fate ought not to overtake the banker because his book does not interest him alone, but involves the interests of the larger *clientele*. In this view of the case, I am for the Bill being read in Council, leaving it for the Select

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Committee to remove all objectionable portions and bring in other institutions which will be really benefited by this concession being granted to them.

MR. J. JOHN NIDIRY (*Changanachery* cum *Minachil*): Sir, I am sorry that I cannot support the Bill as it is. It has been suggested that, because there is such a Bill in British India and because there is some application made from certain banks working in Travancore, the necessity has arisen. To my mind, the Evidence Act should have been the first piece of legislation brought forward before this Council and this Bill should have followed it. If we are so fond of imitating the British Indian procedure in law-making I think we should follow it entirely. (*Hear, hear.*) It was the Evidence Act that was first passed in British India and the Bankers' Books Evidence Act followed it much later. If my friend the Law Member had followed that procedure, it would have been more in the fitness of things. This is something like putting the cart before the horse.

Another thing ,which seems to be objectionable in the Bill as it is is that section 3 of the Bill gives power to extend the provisions of this Regulation to any manner of banks which the Government chooses, including individual banks or partnership banks. My submission is that the method of delegating or reserving powers to Government has become almost sickening to the members of this Council. In every Bill that we come across in this Council, the most important portion—that is the practical portion of the bill—is generally reserved to the Government. Our experience is that these reservations to the executive by way of notifications and rules are always followed with hardship to the ordinary public because they are very often issued without consulting their convenience. Under these circumstances, I am entirely at one with the previous speakers who opposed that portion of the Bill. If my friend Mr. Subba Aiyar had confined his attention to the banks which are registered under the Companies Act or which are under the law bound to send the balance sheet and other accounts which are open also to the public, I would not have much objection to accept the Bill in that modified form. My submission is that the learned mover has gone too far. Under these circumstances, I cannot support him.

MR. A. HOOGEWERF (*Nominated*): Sir, I must confess that I have not read the Bill closely. (*Laughter.*) I shall speak on the general principles. I listened to the speeches of my learned friends on this side and I also heard what Mr. Krishna Aiyangar had to say on the matter. I wanted to join hands with my friends there; but after hearing what the Deputy President had to say, I stand converted. Those banks which are sound are alone to be protected. Taking away ledgers and important books from them and keeping them for months and years in a court of law will cripple the banks a great deal. That is an important point which struck me as a sound reason for an argument in favour of the Bill. It may have many defects; but on principle I think it is very sound. I say *on principle.* Various defects about details have been pointed out. I am sure the Select Committee will look into all these defects when

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[Mr. K. Paramesvaran Pillai.]

the Bill is sent to it. With these few words, I support the principle of the Bill.

MR. M. R. MADHAVA VARIAR (*Chengannur cum Pattanamtitta*): Sir, I too oppose the principle of this Bill. Now this Bill is introduced to remove the inconvenience caused or being caused to certain banks. The inconvenience is not peculiar to the bankers; it is common to all people. Nobody considers it a pleasure to go to the court and give evidence. But, in respect of certain firms and banks and other companies, even now there is a rule that, if account books are produced before the courts, they can be taken back if a certified copy is given. This Bill says that account books need not be produced in courts, certified copies need alone be produced in courts, and even if they are produced their truth need not be sifted by the examination of officers of banks or companies. Only in special cases can the officers of banks be examined. So that the truth cannot be sifted in courts. The Bill is based on the assumption that the account books are correct and infallible. If the litigant is given the right to summon the officers of the banks to get at the truth of these account books or if the litigant is not given the right of calling for the production of these documents, I think that truth cannot be found out by courts. Section 7 says:

"Notwithstanding anything contained in this Regulation, the court may order the production of any banker's books when it thinks that an inspection or perusal thereof is necessary in the ends of justice."

This right of calling for the original is not left to the litigant but to the court. The litigant may think that the book is incorrect. If he thinks so, he cannot insist upon the production of these books. On these grounds, I oppose the Bill.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): Sir, I also rise to oppose the Bill. It appears to me that there has been a misconception with respect to the banking institutions to which this Act would apply. There are two classes to which this Bill seems to apply. One is registered companies, and the other those individuals or firms to whom this Regulation may apply. In regard to the registered companies, absolutely no discretion is given to the Government as to whether one should be given the privilege and another should not be given. The law gives it that protection which nobody can deny it after the law has been passed. But the Government has discretion only with those individuals whose business is not registered under the Companies Act. Therefore, once the law is passed, so far as registered companies are concerned, whether they are in a respectable condition or not, the privileges accorded by this legislation would apply to all these banks. No doubt, it is possible to conceive that there may be some registered companies of very great standing, prestige and usefulness which may be allowed the convenience of not producing their books in court. But that alone should not influence us in coming to a determination on the point. Mr. Krishna Aiyangar asked us what detriment there is to the public. The question, in a matter like this, is not what detriment the

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public would suffer; the paramount question is what is the advantage or benefit that would accrue to the public by the passing of a Regulation like this. It is not in the interest of the public; it is only in the interests of a few individual banking concerns. I think that is conceded.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Who conceded that?

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I said the public.

MR. K. PARAMESVARAN PILLAI (*Tiruval'a*): So far as Mr. Krishna Aiyangar's argument goes, there is no injury to the public interest. My question is whether public interests have been taken into consideration by giving this privilege to a few banks and companies. As was pointed out by Mr. N. Padmanabha Pillai, the prime matter is the public benefit and the convenience of the little companies or a few particular individuals should not weigh with us. Therefore it is no argument at all to say that there is no public injury or detriment.

So far as registered companies are concerned, my objection is that there are companies and banks which might deserve the privilege; but there are a larger number of companies which do not deserve any privilege at all.

With reference to the other point, there is no definition of banker in this Regulation. The definition is only this:

"Bank and Banker mean (*a*) any company carrying on the business of bankers ;(*b*) any partitionship or individual to whose books the provisions of this Regulation shall have been extended as hereinafter provided."

So that, a bank or banker to whose books the provisions of the Bill shall have been extended becomes a banker under the Regulation. Thus the Government gives the name of a bank to a firm doing money lending business. Once it recognises its right to produce certified copies in court, it becomes a bank under the Bill. Absolutely no discretion rests upon the Government as to determining whether a particular business is a bank or a man a banker or not. Once the Government dubs the name of bank to a business firm or a person as banker the Regulation *ipso facto* applies to him and his business. Now, in regard to this important provision, in the first place, the Regulation gives no guidance as to how the Government should determine what kind of business should be considered as a bank and why and how far such a privilege should be confered upon the firm or the person concerned. No such guidance is given by any definition or power to frame rules under the Regulation.

Secondly, it appears to me that, in regard to these private firms and individuals doing money-lending business, Government have absolutely no measure whereby to control such business. So far as the companies are concerned, we have got the Registrar of Joint Stock Companies, and under the Joint Stock Companies Act, Government have got a certain measure of control over the management of those companies or firms. But, in regard to the other firms, Government have no control and there is no machinery by which Government can determine the solvency

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[Mr. Joseph Panjikaran.]

or otherwise of the firms. Under these circumstances, it appears to me that it is too wide a power to be vested in the Government to extend the provision to any individual doing money-lending business. The first thing, therefore, as has been suggested, is to get control over these money-lending concerns by a proper legislation brought forward to that effect in this Council; and when that is done, it will be time enough to consider what privileges should be accorded to these so-called bankers or banking businesses.

Then, I come to the production of certified copies. There is no provision in the Bill which compels or makes it obligatory upon these persons to grant certified copies to persons who ask for them. Then, in regard to those copies themselves, what are those copies? Section 4 of the Bill runs as follows:

"No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book, the contents of which can be proved under this Regulation or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court made for special cause."

Thus, these copies are admitted as evidence under the above section. Such certified copies, according to the definition of the term, may be attested by the accountant or the manager of the firm. What is the status of that man? It may be an accountant who is appointed one day and dismissed the next day. The manager may come and say, "This was granted by a man who has left my service and it is false and incorrect". And all manner of disputes will arise in regard to the correctness of the copy. It will be something like a receipt granted by the *Karyasthan* of a *Jenmi* in regard to *michavarum* and other dues. And there will be various difficulties in regard to all these matters, and the interests of the public are not at any rate to be served by this Bill. The privilege is going to be conferred upon a class of people, because a few of them are respectable and would like to have the privilege. It appears to me that this is quite an unnecessary piece of legistation and I oppose it with all my might.

MR. JOSEPH PANJIKARAN (*Shertallai*): Sir, I rise to oppose this Bill not because I do not approve of the principle underlying it, but because, in my opinion, the need for such a legislation has not arisen in our country. The principle, as explained by my friend Mr. Krishna Aiyangar, is that industry and trade depend on banking interests. In England and other countries, the volume of trade and industry was so great and the number of people taking part in them was so large that, when on account of litigation the account books had to be kept for a long time in court, the public as a whole felt that industry and trade were suffering. Certainly, under those circumstances it was necessary that the legislature should have stepped in and introduced some measure whereby such interests could be protected. But the question is whether in our country such a need has arisen. Certainly, the principle that is contained in the Bankers' Evidence Act in England is sound and it has been adopted in British India. We do not say anything against the

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principle itself. But the conditions and circumstances which existed in England at the time when the Act was introduced there do not exist in our country at present. That is the standpoint from which we oppose the Bill. Merely because the principle is good, are we to have a legislation before the circumstances have arisen for introducing a measure of the kind? That is the point. Possibly, when trade and industry enlarge to such an extent that the country may be said to be an industrial country depending upon banking interests, then it will be time for us to consider whether some such measure would not be necessary for protecting, not the banking interests, but the interests of the public as a whole. As I said, such a contigency has not arisen for us to pass a Bill of this kind. This would be putting the cart before the horse, *i. e.*, trying to satisfy a need before it has actually arisen.

When my friend MR. Subba Aiyar was moving the Bill, he was asked how many applications had been made to the Government by the banking interests saying that their business was dislocated on account of their books being kept in courts of law. The only instance that he was able to give was that of the Imperial Bank of Inda. I doubt whether one single representation by a single banking body is sufficient for us to introduce a measure of this kind. The most fundamental question is whether the inconveniences suffered by that banking body were such as to inconvenience the public. There are two aspects to the question. They are the inconvenience suffered by a particular banker and the inconvenience suffered by the people at large. Here the Bill is introduced, I think, solely to promote the convenience of the bankers without at the same time trying to safeguard the interests of the public. So, although we cannot but approve the principle underlying the Bill, we cannot but oppose it because the circumstances existing in our country do not call for such a legislation at present. We are not going to legislate for certain contingencies which might arise a hundred years hence. Then it may be time for us to think of such legislation. So I oppose the introduction of the Bill.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Sir, I oppose the introduction of the Bill in its present form and at this stage. As rightly observed by Mr. Paramesvaran Pillai, as soon as the Bill is passed into law, all the Joint Stock Companies registered under the Companies Regulation will automatically secure the privilege conferred by this Bill. I am not aware of any provision in the Companies Regulation in Travancore authorising Government or empowering Government to inspect their accounts. In the case of Co-operative Banks, the Anchal Office and the municipal bodies referred to by my friend Mr. Krishna Aiyangar, their accounts are liable to be audited periodically by the officers of Government appointed for the purpose. There is thus considerable safety ensured in regard to the accounts of such institutions. But to apply this principle to all the companies at the present stage appears to me to be undesirable.

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[Mr. Joseph Panjikaran.]

I would also urge it as a general principle that it would be desirable for the Government in such matters not to undertake the responsibility of attempting at legislation in favour of particular interests that are adequately represented in this very Council. I should point out that there are two members by whom the banking interests are adequately represented in this Council and no representation has been made by them in regard to this matter. The very fact that they are absent now when the Bill is introduced shows that after all they do not care for such a measure. It will therefore be desirable that the Law Member leaves such matters affecting particular interests which are specially represented in this Council to be undertaken by themselves and not by the Government who should take the initiative regarding subjects of general public intrest. I would therefore oppose this measure on principle.

PRESIDENT: We have no representation of banking interests separately.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): There are two members to represent mercantile and banking interests.

PRESIDENT: Commerce and Industries.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): We find that companies are also represented by them, because the companies have been given the power to elect them. The companies too form the members of the constituency.

MR. K. DOMINIC TOMMAN (*Peermade* cum *Devicolam*): I also oppose the principle of the Bill. I am afraid that, if this Bill is passed into law, it will give facilities to private bankers to evade income-tax officers. That will give them facilities to keep duplicate account books. There are unscrupulous private bankers in the country as we very well know; and the introduction of this measure will prove disadvantageous to the Government on that point.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I owe an apology to the House in that I did not make a long speech, because, after all, I thought it was a very simple matter and would not meet with any opposition on the other side. I would now explain and try to meet some of the objections which seem to have been based upon some misconception—I may be pardoned if I say so—in understanding some of the sections.

In the first place, it is said that it is only in the interests of the bankers that this Bill has been introduced. It is as much in the interests of the public as it is in the interests of the bankers.

MR. JOSEPH PANJIKARAN (*Shertallai*): Have you any instance of the public having suffered for want of a measure of this kind?

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MR. V. SUBBA AIYAR (*Adaitional Head Sirkar Vakil*): I am coming to it. It is in the interests of the public. We know, as a matter of fact, that in the case of these banks, there are considerable withdrawals and considerable deposits day after day and the account books have to be written up day after day. In a case of that kind, if the account books are asked to be produced in the Munsiffs' Courts or the District Courts and detained there for days together, the difficulty which the banker will experience can be very easily imagined. In such cases, how is it possible to expect that the books will be written up day after day, which is the only satisfactory evidence for a court to accept? Where is the guarantee that the account is written up day after day in order that the court may accept it? If that guarantee is taken away, I do not know, in the case of large deposits and withdrawals, what the banker's books will be worth.

MR. S. KRISHNA AIYAR *Mavelikara* cum *Kartigapalli*): Does he say the bankers do not write up accounts every day?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It could not be done.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): What do they do now?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Of course, they will have to write up the book as soon as it is returned.

Secondly, the most important portion of it is this: If any litigant wants to know whether there is any entry in a particular bank book, there is absolutely no way for him to know whether that book contains the entry. He has absolutely no access to the book unless he calls for it. It may be for him or against him. Mr. Paramesvaran Pillai says that there is no obligation on the part of the bank in respect of this. I say there is section 6 which specifically says that the litigant may be allowed to apply to the court to permit him to inspect and take copies of any entries in a banker's book, or the court may order the production of certified copies, saying that the book does not contain any other entry relating to the matter in issue. In other words, every litigant has the right to demand a copy of the entries in the book relating to the matter in issue and it be may that, after getting the copy of the entry which may be for him or against him, he may not take the trouble of asking the bank to produce the book itself. That is a very valuable privilege conferred by the Bill.

The next argument that was advanced is that we must have first the Evidence Act and then this Regulation. I am sorry to join issue with my friends on this question. Although the Evidence Act is not law in this country, although in some cases it may be that our High Court may be prepared to differ from the British Indian law on the subject, I will ask my friends on the other side, most of whom are lawyers, to state a single instance in which what is called secondary evidence in British India has been accepted as primary evidence in Travancore. In other words, so far as secondary evidence is concerned, the

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[Mr. V. Subba Aiyar]

British Indian Law is followed very closely here. We do not transgress an inch. If that be the case, and if under no system of law this can be stated as primary evidence, it is absolutely necessary that their interests should be protected.

In the first instance, all companies registered under the Companies Regulation are to be included. Of course, it was interpellated by Mr. G. Parameswaran Pillai whether the Co-operative Bank has been included. If that has been registered under the Co-operative Societies Regulation, certainly that also will have to be included.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In view of the fact that the British Indian Act does not cover cases of co-operative societies, is it necessary that we should have a provision including them also?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): When the Act was passed in British India, there were no co-operative societies at all. It was passed in 1891. Therefore we can very easily understand why the co-operative societies were not covered by the British Indian Act.

PRESIDENT: In the Co-operative Act of British India, provision is made for arbitration. Therefore the account books seldom go to courts.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): At the time when the present Bill was drafted, had not Mr. Subba Aiyar in view the fact that there are co-operative societies in Travancore?

PRESIDENT: He says that it is an omission.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): This did not suggest itself to me at the time when the Bill was drafted by me. It is certainly an omission. I do not claim that the Bill is perfect.

So far as the companies are concerned, there is the statutory provision for auditing the accounts of the companies by a certified auditor, and the certificate of the auditor has to be appended along with the report. Therefore we see that, so far as the companies are concerned the necessary safeguards have been provided to see that the companies are keeping proper accounts and they have also to produce their balance sheet. Even as regards the private firms, Government may extend the provision in some cases where they think it necessary and may ask the firms to publish the balance sheet. Only such firms as are exempted by the Government are entitled to the privilege mentioned in the section. I do not think it is a very difficult matter to be overcome.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): Will it not be enough if the exemption is granted to the Imperial Bank alone?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not know whether we should restrict it like that. If we can exempt

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the Imperial Bank, we will have to extend the exemption to the Nedungadi Bank and then to the State-aided Bank that we propose to create. Every time a new and respectable bank is created, it may demand the privilege of exemption and we will have to add to the list of banks exempted, and something like a schedule will have to be published as in the case of those animals and birds which are exempted under a particular Regulation. It will rather be awkward to publish a list of banks that have been exempted. That is why I say that in the case of these banks there may not be any difficulty. We may impose the necessary safeguards in the interests of the public when the Bill is being considered by the Select Committee.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): Will the Law Member be able to say in how many cases the Imperial Bank had to file their accounts in the courts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe there are many cases.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Is the Imperial Bank benefited by this provision?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It will be; because, under section 278 of the Travancore Companies Regulation, the Imperial Bank also will come in.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Subba Aiyar whether he is aware of any case where the books of the Imperial Bank have been detained unconscionably.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I did not get the necessary statistics on the point.

Another point mentioned by Mr. Paramesvaran Pillai is that the term "Bank" has not been properly defined in the Bill. I may tell him that the definition should be read with section 3 which distinctly says:

"The Government may, from time to time, by Notification in the *Government Gazette*, extend the provisions of this Regulation to the books of any partnership or individual carrying on the business of bankers within Travancore, and keeping a set of not less than three account books, namely the cash book, a day book or journal, and a ledger and may in like manner rescind any such Notification."

So that they should be banks in the first instance, and they should keep a certain number of books prescribed. If so and if Government are otherwise satisfied, then they may be extended to particular individuals or partnerships. I believe that is sufficient safeguard.

Mr. Krishna Aiyar suggested that copies of the entry might be produced. I think that will not remedy the evil. The Bank or some agent of the Bank will have to give evidence. I believe section 4 is clear on the point. It says:

"Subject to the provisions of this Regulation, a certified copy of any entry in a Banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise."

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[Mr. V. Subba Aiyar.]

I think it is to some extent, as I would read it, evidence to the existence of the transaction.

Another objection—I think Mr. Padmanabha Pillai referred to it—is that we have not inserted the necessary safeguards which we find in the British Indian Act.

MR. N. PADMANABHA PILLAI (*Karunagapalli*): I referred to the English law on the subject.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I think the definition of 'certified copy' provides all the safeguards necessary. It is said:

"Certified copy means a copy of any entry in the books of a Bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the Bank and was made in the usual and ordinary course of business and that such book is still in the custody of the Bank, such certificate being dated and subscribed by the Principal Accountant or Manager of the Bank with his name and official title."

I think this contains all the safeguards mentioned by Mr. Padmanabha Pillai, and therefore, it is unnecessary to put in—

MR. N. PADMANABHA PILLAI (*Karunagapalli*): May I point out, by way of explanation, that what the English Act provides is that actual proof is a condition precedent to the production of secondary evidence? Here we provide only for a certification.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): Will Mr. Subba Aiyar tell us, whether, as the law is at present, the account books are only corroborative evidence and not primary evidence and that therefore the transaction has to be proved separately?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Any servant or agent of the bank can prove the existence of a particular transaction only by means of entry in the bank book. I believe I am sufficiently clear on the point.

With reference to clause 5, it is stated that it exempts all officers of the bank and my friend Mr. T. K. Velu Pillai humorously pointed out that royalty alone is exempted. I do not think that it is a correct reading of the section. The section distinctly says that, whenever the court thinks that the evidence of the officers of the bank is necessary, they may be summoned and examined as witnesses.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): May I be permitted to say that I understood the section in the very same sense and yet I argued in a different way? (*Laughter.*)

MR. V SUBBA AIYAR (*Additional Head Sirkar Vakil*): Ordinarily, the officer should not be compelled to produce the bankers' books. The section clearly says:

"No officer of a Bank shall in any legal proceeding to which the Bank is not a party be compellable to produce any Bankers' Book the contents of which can be proved under this section or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court made for special cause",

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Therefore, if it is represented to the court or if the court finds that it is absolutely necessary to summon a particular officer, I beg to say that the court has got the power to summon him and examine him as a witness. Therefore it does not in the least remove the discretion of the court if it thinks that, in the ends of justice, the party concerned should be summoned.

Then it is stated that section 7 is put in, that it is not in the British Indian Act and that it nullifies the effect of the Bill itself. To my mind, that section strongly argues in favour of the Bill. We do not find any such provision in the British Indian Act. It is entirely my own. The reason for that is that, when I looked up the authorities, it was ruled in Bombay, I believe, that it is open to the court to exercise its discretion and call for the originals. I thought it necessary to incorporate the same in the Bill instead of leaving it to the rulings of courts. I thought it would be better in the interests of justice to mention clearly and definitely that the production of the originals might be ordered by the court when it thought it necessary and that in such cases, it would not hesitate to do so.

I may say that, in the case of a banker who has large dealings in money, it is certainly not desirable to place his account books in the court where the credit and the debit entries may be looked into by many and thereby his interest might be considerably affected. I am sure no *hundi* firm will allow the whole of its account books to be examined by the court. Only the portions relating to the point in issue should be referred to.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Subba Aiyar if he places his accounts in the Bank on a higher footing than his own private accounts.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes. Unless it is absoulutely necessary in the interests of public justice —

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): I wish to know whether, when books are produced in Court, anybody is entitled to look into them.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Whatever may be said to the contrary, I say it may be looked into by ever so many persons. We need not stand upon high technicalities. I know as a matter of fact, in a particular case which was argued by me in the High Court, my party objected to the whole of the book being looked into and was willing to show the particular portion relating to the case. But the opposite side—I believe Mr. Krishna Aiyar appeared for that side —wanted to look into the whole of the book. The High Court said that it would not be safe in the interests of the Bank to allow others to look into the whole of their books, because the public might thereby draw inferences as to the solvency or otherwise of the company.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartikapalli*): Is it not considered to be an illegal act to look into account books that have been produced in courts?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It may be; but ever so many illegal acts are done. It may be that clerks happen to look into these books.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Are these people still in the service of the Government?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is not always the Government servant that does it. The vakil may look into it. He may have confidence in a clerk who is very intelligent. He may give the information to others. The mischief is very easily done.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I wish to know whether the same objection will not hold good in cases where the production is called for at a later stage.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In such cases it will be absolutely essential in the interests of justice. But such cases will be exceptions. Simply because in exceptional cases a man may be inconvenienced, that does not argue that in all cases he must be inconvenienced.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to know whether, if this Bill be not passed, banking business will come to a standstill.

PRESIDENT: That is a hypothetical question. It cannot be allowed.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Is not banking business thriving in Travancore in spite of these disadvantages?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It will be seriously inconveniencing the bankers. That is all that I can say. The Imperial Bank, for instance, has a large number of deposits and withdrawals every day, and if for some reason or other their books are taken to the courts, I think they will have time only for the production of such evidence and for nothing else.

MR. JOSEPH PANJIKARAN (*Shertallai*): Will Mr. Subba Aiyar give us a single instance where dislocation of business has been caused in the past on account of the absence of this provision?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): It is not dislocation. The inconvenience has been represented and there is a cry for legislation. I never said that the whole thing would come to a dead stop for want of this provision.

MR. JOSEPH PANJIKARAN (*Shertallai*): Was any representation made to Government by any trader that he was not able to deal with the bank on account of the books being taken to the courts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): As it is, it is not open to a trader to make that objection.

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MR. JOSEPH PANJIKARAN (*Shertallai*): I am afraid my question has not been understood. I asked whether any representation was made to Government by any trader or merchant that on account of the bank books being kept in the court he was not able to do any business with the bank.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there has been any such representation.

MR. JOSEPH PANJIKARAN (*Shertallai*): Has there been any representation from any industrial corporations?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No.

MR. JOSEPH PANJIKARAN (*Shertallai*): Then what is meant by saying that in the interest the of public this provisicn has been put in? The Law Member has said that the whole thing has been done in the interests of the public.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am sorry I did not make the point plainer. On account of the production of the account books in courts, it is not possible to have regular entries made in the ledger. The inconvenience caused on account of this is very great.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Kartigapalli*): Will Mr. Subba Aiyar say whether the inconvenience is not confined to cases of the removal of the current books, and will he give any instance where the current books alone have been produced in courts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that in most cases it is the current books that are taken to the courts. Suits are filed now-a-days very promptly; and so current books have often to be taken to the courts.

I believe I have sufficiently explained the Bill. The Bill exempts only banks registered under the Companies Act and allows them to produce certified copies of the accounts. It enables the public to get the certified copies and we are not prevented from adding any other safeguard as suggested by some of the members here when the Bill is being considered by the Select Committee. I do not think any serious inconvenience will be caused to the public nor is it such a serious interference with the rights of the public.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I wish to ask Mr. Subba Aiyar if there is any disadvantage in the Bill waiting till the larger question of controlling and regulating banks is taken up for legislation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as the companies are concerned, they are even now regulated and controlled by the Government. If necessary, that section as to individuals, firms or partnerships might be deleted or the necessary safeguards might be added to the provision. The Bill is liable to be revised in any manner you like by the Select Committee. I do not think we are precluded from doing that.

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[President.]

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Is the Law Member aware that under the Companies Regulation Government officers have absolutely no power of examining the accounts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): If that be so, what are the auditors meant for?

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Auditors are not Government officers. Under the Companies Act, the Registrar of Joint Stock Companies or the Audit Officer has no power to inspect the accounts themselves.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): So far as the higher officers are concerned, they need not inspect the accounts of the companies, and even if they inspect they may not be able to understand anything. These books of the companies are checked and audited by auditors who have been certified by the Government. I believe these certificates will be far safer in the interests of the public than any inspection by the Registrar himself.

MR. A. GOVINDA MENON (*Alangad* cum *Parur*): Is the Law Member aware of any case in which the Government refused to help a Bank which had a good auditor's certificate, unless the Bank allowed a Government officer to examine its accounts?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I am not aware of any such thing.

MR. S. KRISHNA AIYAR (*Mavelikara* cum *Karliyapalli*): I wish to know whether the auditor at present at any time values the holdings of a company doing banking business.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I believe generally the buildings, etc., are included in valuing the assets and liabilities of the company. That is my belief. I have not gone through all the auditors' certificates.

The question that the Travancore Banker's Books Evidence Bill be read in Council was then put to the vote and lost, 17 voting *for* and 19 *against*.

PRESIDENT: The Council will now rise. It will not meet to-morrow as the official business has already been completed. We will meet again day after to-morrow at half past eleven.

The Council rose at 5-5 P. M.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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